

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4785 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MUSIRKHAN @ BADSHAH AKTARKHAN PATHAN

Versus

STATE OF GUJARAT

Mr R J Goswami for the petitioner
MR HL JANI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 23/09/98

ORAL JUDGEMENT

By way of this Special Civil Application, the petitioner has challenged the order of detention dated 16.2.1998 passed by the Commissioner of Police, Ahmedabad.

2. It is well settled that in order to bring a person within the expression "dangerous person" as

defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapterp XVI or XVII of Chapter V of the Arms Act and that single or isolated act failing under the said Chapters cannot be characaterised as a habitual acts as envisaged in section 2 (c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression 'public order'. A distinction has to be drawn between the 'law and order' and 'maintenance of public order'. A reference may be made of M J Shaikh v. M M Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have perused the material on record with the assistance of the learned Advocate. The statement of the witnesses are of general nature and vague. Considering the material on record, I do not find anything which may indicate that the petitioner is a dangerous person. Thus, in my view, the order of detention is illegal and the same cannot be sustained.

4. In the result, this, this Special Civil Application is allowed. The impugned order of detention dated 16.2.1998 passed by the Commissioner of Police, Ahmedabad is quashed and set aside. The detenu shall be released forthwith if not required in any other case. Rule made absolute accordingly.

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msp